



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[EPA-R10-OAR-2022-0374; FRL-9881-02-R10]

National Emissions Standards for Hazardous Air Pollutants; Delegation of Authority to Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a delegation request submitted by the Washington State Department of Health (WDOH) for full delegation of authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants for radionuclide air emissions.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2022-0374. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jim McAuley, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-1987 or mcauley.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Final Action
- III. Statutory and Executive Order Reviews

I. Background

Effective July 5, 2006, the EPA granted WDOH partial approval and delegation to implement and enforce the radionuclides National Emission Standards for Hazardous Air Pollutants in the State of Washington, specifically, 40 CFR part 61, subparts A, B, H, I, K, Q, R, T, and W (Radionuclides NESHAPs) as in effect on July 1, 2004 (71 FR 32276, June 5, 2006). The EPA granted WDOH partial rather than full approval and delegation of the Radionuclides NESHAPs because WDOH did not at that time have express authority to recover criminal fines for certain actions, as required by 40 CFR 70.11(a)(3)(iii) and 40 CFR 63.91(d)(3)(i)(A). The EPA also approved a streamlined mechanism by which WDOH could receive partial approval and delegation of newly promulgated or revised Radionuclides NESHAPs as provided in 40 CFR 63.91(a)(1) and (d)(2).

On February 3, 2012, WDOH submitted a request for full approval and delegation of the Radionuclides NESHAPs and submitted updates to its request in letters dated April 10, 2017, August 11, 2017, September 18, 2017, and February 25, 2022.

The EPA proposed to approve WDOH's request for full delegation of the Radionuclides NESHAP on July 21, 2022 (87 FR 43464). The reasons for proposed approval are included in the proposed action and will not be restated here. The public comment period for the proposed action closed on August 22, 2022, and we received two comments. Both commenters supported the EPA's decision to grant full delegation of authority to implement and enforce the Radionuclide NESHAPs to WDOH in Washington State. One commenter stated that the delegation authorizes WDOH to make

“minor changes to this rule.” The EPA notes that the authority to make minor changes is limited to those changes discussed in the July 21, 2022, proposal (87 FR 43464 at page 43465) and described in Section II of this preamble. The second commenter noted that WDOH will be able to streamline further delegations through letter of approvals resulting in efficiencies between the agencies. As discussed in the proposal, this action includes approval of a streamlined mechanism by which WDOH may receive partial approval and delegation of newly promulgated or revised Radionuclides NESHAPs as provided in 40 CFR 63.91(a)(1) and (d)(2).

II. Final Action

A. Authorities Included from this Approval and Delegation

Except as provided in Section II.B of this preamble, the EPA is granting WDOH full approval and delegation of authority to implement and enforce the Radionuclides NESHAPs as in effect on July 1, 2021. Included in this full approval and delegation of the Radionuclide NESHAPs is the authority to approve: 1) “Minor changes to monitoring”¹ including the use of the specified monitoring requirements and procedures with minor changes in methodology as described in 40 CFR 61.14(g)(1)(i); 2) “Intermediate changes to monitoring;” 3) “Minor changes to recordkeeping/reporting;” 4) “Minor changes in test methods,” including the use of a reference method with minor changes in methodology as described in 40 CFR 61.13(h)(1)(i); and 5) waiver of the requirement for emission testing because the owner or operator of a source has demonstrated by other means to WDOH's satisfaction that the source is in compliance with the standard as described in 40 CFR 61.13(h)(1)(iii). Any authorities not addressed in Section II.B. of this preamble and not identified in any delegated subpart of the

¹ For purposes of this paragraph, the terms in quotations have the meaning assigned to them in 40 CFR 63.90.

Radionuclides NESHAPs, including 40 CFR part 61, subpart A, as authorities that cannot be delegated shall be considered delegated. See 67 FR 3106, at page 3109, footnote 3 (January 23, 2002).

B. Authorities Excluded from this Approval and Delegation

The EPA is not delegating to WDOH authorities under 40 CFR part 61 that specifically indicate they cannot be delegated, that require rulemaking to implement, that affect the stringency of the standard, equivalency determinations, or where national oversight is the only way to ensure national consistency. The following Table 1 identifies specific authorities within 40 CFR part 61, subparts A, B, H, I, K, Q, R, T, and W, that the EPA is excluding from this delegation.

Table 1. Part 61 Authorities Excluded From Approval and Delegation

Section	Authorities
61.04(b)	Waiver of recordkeeping
61.04(c)	Delegations to state and local agencies
61.05(c)	Waivers/exemptions
61.11	Waiver of compliance
61.12(d)	Approval of alternative means of emission limitation
61.13(h)(1)(ii)	Approval of alternatives to test methods (except as provided in 40 CFR 61.13(h)(1)(i))
61.14(d)	Combined effluents
61.14(g)(1)(ii)	Approval of alternatives to monitoring that do not qualify as “Minor changes to monitoring,” “Intermediate changes to monitoring,” or “Minor changes to recordkeeping/reporting” ²
61.16	Availability of information
61.23(b)	Subpart B--Radon Emissions from Underground Uranium Mines Alternative; compliance demonstration to COMPLY-R
61.93(b)(2)(iii), (c)(2)(iii)	Subpart H--Emissions of Radionuclides Other than Radon from DOE Facilities

² For purposes of this Table 1, the terms in quotations have the meaning assigned to them in 40 CFR 63.90.

61.107(b)(2)(iii), (d)(2)(iii)	Subpart I--Radionuclide Emissions from Federal Facilities Other than NRC Licensees and Not Covered by Subpart H
61.125(a)	Subpart K--Radionuclide Emissions from Elemental Phosphorus Plants
61.206(c), (d), and (e)	Subpart R—Radon Emission from Phosphogypsum Stacks

C. Other Implications of this Action

Under this full delegation and approval:

1. Sources in Washington subject to the delegated Radionuclides NESHAPs should continue to direct questions and compliance issues to WDOH except with respect to those authorities that are not delegated (those noted in Section II.B. of this preamble). For those authorities noted in Section II.B. of this preamble, affected sources should continue to work with the EPA as their primary contact and submit materials directly to the EPA, copying WDOH on all submittals, questions, and requests.
2. Sources subject to the Radionuclides NESHAPs continue to be required to send required notifications, reports and requests to WDOH for WDOH's action and to provide copies to the EPA. For authorities that are excluded from this delegation (see Section II.B. of this preamble), sources should continue to send required notifications, reports, and requests to the EPA and to provide copies to WDOH.
3. Any records or reports provided to or otherwise obtained by WDOH relating to the Radionuclides NESHAPs should be made available to the EPA upon request. In accordance with 40 CFR 61.16 and 63.15, the availability to the public of information provided to or otherwise obtained by the EPA in connection with this delegation shall be governed by 40 CFR part 2. The EPA may request notifications and reports from owners/operators and/or WDOH.
4. WDOH must continue to maintain a record of all approved alternatives to all monitoring, testing, recordkeeping, and reporting requirements and provide this list of alternatives to the EPA at least semi-annually, or at a more frequent basis if

requested by the EPA. The EPA may audit the WDOH-approved alternatives and disapprove any that it determines are inappropriate, after discussion with WDOH. If changes are disapproved, WDOH must notify the source that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the source does not maintain the conditions which prompted the approval of the alternatives to the monitoring testing, recordkeeping, and/or reporting requirements, WDOH must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.

5. WDOH shall require affected facilities to use the methods specified in 40 CFR part 61 in performing source tests pursuant to the regulations. See 40 CFR 61.7.
6. Enforcement of these delegated Radionuclides NESHAPs in WDOH's jurisdiction will be the primary responsibility of WDOH. Nevertheless, the EPA may exercise its concurrent enforcement authority pursuant to sections 112(l)(7) and 113 of the Clean Air Act (CAA) and 40 CFR 63.90(d)(2) with respect to sources which are subject to the Radionuclides NESHAPs.
7. Implementation and enforcement of the delegated NESHAP are subject to the *Environmental Performance Partnership Agreement* between the State of Washington and the EPA and its successor documents. The Agreement defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of ICIS-Air via the Exchange Network. WDOH will ensure that all relevant source notification and report information is entered as provided in the Agreement into the specified EPA database system to meet your recordkeeping/reporting requirements.
8. This full approval and delegation delegates to WDOH authority to implement and enforce the Radionuclides NESHAPs, as in effect on July 1, 2021. Radionuclides

NESHAPs that are promulgated or revised substantively after that date are not delegated to WDOH.

9. This approval and delegation does not extend to any additional State standards or requirements, including other State standards or requirements regulating radionuclide air emissions. Section 116 of the CAA provides that, with some exceptions not applicable here, nothing in the CAA precludes or denies the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of air pollutants or any requirement respecting control or abatement of air pollution so long as the State requirement is not less stringent than a standard or limitation in effect under an applicable implementation plan or under section 111 or 112 of the CAA. Washington State standards that are more stringent than the Radionuclides NESHAPs are enforceable as provided under State law, but are not enforceable under the CAA or in any way part of this full approval and delegation of the Radionuclides NESHAPs to WDOH.
10. WDOH may receive full approval and delegation of newly promulgated or revised Radionuclides NESHAPs by the following streamlined process: (1) WDOH will send a letter to the EPA requesting delegation for such new or revised Radionuclides NESHAPs which WDOH has adopted by reference into Washington regulations, reference its previous demonstration, and reaffirm that it still meets the criteria for any full approval and delegation of the NESHAPs; (2) the EPA will send a letter of response back to WDOH granting approval of the delegation request (or explaining why the EPA cannot grant the request), and publish notice of the EPA's approval in the *Federal Register*; (3) WDOH does not need to send a response back to the EPA.

11. Although WDOH is not obligated to request or receive future delegations of the Radionuclides NESHAPs, the EPA encourages WDOH, on an annual basis if the Federal standards have changed, to revise its rules to incorporate by reference newly promulgated or revised Radionuclides NESHAPs and request updated delegation of those standards.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve NESHAP delegation requests that comply with CAA section 112(l) and applicable Federal regulations. In reviewing NESHAP delegation requests, the EPA's role is to approve State choices, provided that they meet the criteria and objectives of the CAA and the EPA's implementing regulations. Accordingly, this final action would merely approve the State's request as meeting Federal requirements and does not impose additional requirements under the CAA beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practical and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This full approval and delegation of the Radionuclides NESHAPs does not apply to sources or activities located in Indian country, as defined in 18 U.S.C. 1151.³

Consistent with previous Federal program approvals or delegations, the EPA will continue to implement the NESHAPs in Indian country in Washington because WDOH has not adequately demonstrated authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian country. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

This action is subject to the Congressional Review Act, and the EPA will submit a

³ Under this definition, the EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Intergovernmental relations, Radionuclides, Reporting and recordkeeping requirements.

Dated: November 29, 2022.

Casey Sixkiller,
Regional Administrator, Region 10.

[FR Doc. 2022-26343 Filed: 12/2/2022 8:45 am; Publication Date: 12/5/2022]